

# **Exhibit 66**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL, et al.,

Plaintiffs,

v.

22 Civ. 384 (JSR)

MASON ROTHSCHILD,

Defendant.

New York, N.Y.  
January 30, 2023  
9:30 a.m.

Before:

HON. JED S. RAKOFF,

District Judge  
-and a Jury-

APPEARANCES

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Opening - Mr. Warshavsky

1 with the jurors?

2 THE COURT: That's fine.

3 MR. MILLSAPS: Thank you.

4 Thank you, your Honor. Good morning.

5 Good morning, members of the jury.

6 I Just want to introduce myself again and  
7 Mr. Rothschild's team here. I am Rhett Millsaps, from the law  
8 firm Lex Lumina, here on behalf of the artist Mason Rothschild.  
9 With me are my cocounsel, Jon Harris. You will be seeing him  
10 as well from the law firm of Harris, St. Laurent & Wechsler.

11 Also with us are Monica Delgado, who works with his  
12 firm; Ashley Robinson, also who works with his firm; Adam  
13 Oppenheim, also with the Harris firm; and then my partner at  
14 Lex Lumina, Chris Sprigman.

15 And, of course, this is the defendant, Mr. Rothschild.

16 Mason, would you please stand up for a minute.

17 Members of the jury, Mr. Rothschild is an  
18 up-and-coming artist and an entrepreneur, and he's here today  
19 to stand up for himself and for artistic freedom. And you will  
20 be hearing directly from him on the witness stand.

21 Now, you just heard Hermès' version of this dispute  
22 and its view of Mr. Rothschild as the plaintiff. Hermès gets  
23 to go first throughout this case. I will ask you to keep your  
24 minds open until you have heard all of the evidence and from  
25 all of the witnesses, including Mr. Rothschild.

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Opening - Mr. Warshavsky

1           And Mr. Rothschild and our team and I am sure everyone  
2           in the courtroom today would very much like to thank you for  
3           being here. We know that you are putting in a lot of effort  
4           and time to serve as juror in this case, and we are grateful  
5           for that.

6           I just would like to show you again the holy object  
7           that brings us all here today in the courtroom.

8           Mr. Warshavsky, may I borrow this bag?

9           MR. WARSHAVSKY: Sure.

10          MR. MILLSAPS: Thank you.

11          Hermès was kind enough to let me borrow this to show  
12          it to you. This is Hermès' most popular product, but not  
13          everyone can get one. Not only is there a waitlist to buy one,  
14          but the cheapest one of these bags is going to set you back  
15          about \$12,000. Some of these bags go for as much as \$200,000.

16          And you heard Mr. Warshavsky say Hermès has sold over  
17          a billion dollars of these bags in the last ten years in the  
18          U.S. alone, about \$100 million worth of these bags every year  
19          for the last ten years.

20          You also heard Mr. Warshavsky say that there are a lot  
21          of cultural references to the Birkin bag in television shows  
22          like Sex and the City, Gilmore Girls, and films and music that  
23          you may have heard from Cardi B or Beyoncé.

24          That is because -- and Hermès is very proud of this --  
25          the name Birkin has transcended its status as a mere trademark

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Opening - Mr. Warshavsky

1 indicating the source of goods, and Birkin has become a  
2 cultural symbol of rarefied wealth and privilege in our  
3 society.

4 Now, as you can see here, it is a leather purse, a  
5 very fancy French leather purse, but it is a purse. You can  
6 carry your wallet and your keys in it.

7 Ashley, would you please put the MetaBirkins on the  
8 screen.

9 The images that you see on your screen now are  
10 MetaBirkins. They're flat digital pictures of imaginary Birkin  
11 bags fully covered in cartoonish colorful fur sitting on a  
12 white pedestal. During this trial you will hear  
13 representatives of Hermès admit that Hermès has never made or  
14 sold anything that looks like this. It came out of  
15 Mr. Rothschild's imagination.

16 And you will learn something obvious, but something  
17 very important in this case. MetaBirkins exist only on your  
18 screen in two dimensions. You can't carry them to the store.  
19 You can't put your keys or your tiny dog in them. You can't  
20 even do any of those things with a MetaBirkin in a digital  
21 world, like a video game. It is a flat digital picture like a  
22 painting connected to an NFT.

23 Now, you will be hearing a lot about NFTs during this  
24 trial. An NFT is just a snippet of code on a public internet  
25 register called a blockchain. That's so everyone can trace and

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Opening - Mr. Warshavsky

1 see when an NFT was created and who owns it now and what its  
2 ownership history has been.

3 The easiest way to think of an NFT is like a deed or a  
4 certificate of title, but it's digital. It's called a token  
5 because it represents something else, just like a deed to a  
6 house represents the house or a certificate of title represents  
7 the car that's owned.

8 You will see that an NFT, like a deed, doesn't have  
9 any inherent nature or value by itself. An NFT derives its  
10 value from whatever it is attached to. Just like the deed to a  
11 house would be meaningless if the house didn't exist.

12 You are going to hear that over the last few years  
13 NFTs have become an exciting new way for artists to sell their  
14 work and build audiences and engage with their communities.

15 A little over a year ago, Mr. Rothschild came up with  
16 the idea to make a series of digital pieces of art depicting  
17 imaginary fur covered Birkin bags and to sell them with NFTs.  
18 He decided to call these artworks MetaBirkins.

19 Now, before I go any further, I just want you to  
20 understand why we are all here today. Hermès, this  
21 multibillion dollar fancy French purse maker, has sued  
22 Mr. Rothschild because Hermès says that these MetaBirkins NFT  
23 artworks hurt its coveted Birkin brand.

24 The evidence is going to show you otherwise. This  
25 really is a case about a multibillion dollar corporation trying

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Opening - Mr. Warshavsky

1 to punish Mr. Rothschild because they don't like his art, and  
2 they are scared of what it might show about luxury consumer  
3 culture.

4 Now, there are three key facts in this case.

5 Fact one: The MetaBirkins on your screen are art, and  
6 Mr. Rothschild had an artistic intention in using the name  
7 MetaBirkins for this series of NFT artworks. You can see the  
8 name MetaBirkins describes what you see on your screen. They  
9 are artworks depicting imagery Birkin bags.

10 Mr. Rothschild also wanted to make money with his art.  
11 Hermès will want you to focus only on the money part and ignore  
12 the art part. But you will see from the evidence that both of  
13 those things were true at the same time. They are two sides of  
14 the same coin. Mr. Rothschild wanted to make art and he wanted  
15 to make money and a name for himself with his art. What you  
16 see on your screen is art.

17 Fact two: Mr. Rothschild wanted the credit for  
18 MetaBirkins. He set up a MetaBirkins website and social media  
19 accounts that identified him as the creator of MetaBirkins. He  
20 identified himself as the creator of MetaBirkins in media  
21 interviews.

22 He reached out to some reporters to correct them when  
23 they mistakenly wrote articles saying that Hermès put out  
24 MetaBirkins. And maybe more important than the evidence that  
25 you will see is what you won't hear. You won't see any

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Opening - Mr. Warshavsky

1 evidence that Mr. Rothschild ever told anyone that MetaBirkins  
2 came from Hermès, because he wanted the credit for his own  
3 artwork.

4 Fact three: Consumers who pay tens of thousands of  
5 dollars for luxury handbags like Birkin bags or NFT art were  
6 not confused about where MetaBirkins came from. Hermès own  
7 evidence is going to show this to you.

8 Hermès is going to try to make a big deal out of the  
9 fact that Mr. Rothschild hoped to make money with MetaBirkins.  
10 They are going make a big deal out of the fact that he put a  
11 lot of effort into trying to pump up the price and the  
12 excitement for his MetaBirkins art. They are going to make a  
13 big deal about the fact that he told his associate that he  
14 hoped he could get Hermès to collaborate with him.

15 Mr. Rothschild doesn't dispute any of that. It is all  
16 true. It is perfectly legal for people to make money with  
17 their art. In fact, the First Amendment of our Constitution  
18 protects that right for every American. And you will hear from  
19 Hermès' own witness that it is not unusual for artists to  
20 approach Hermès to pitch a collaboration with them, because  
21 they want to work with Hermès.

22 We are here today because trademark rights are limited  
23 by the First Amendment, which protects artistic creations like  
24 Mr. Rothschild's MetaBirkins. The First Amendment's guarantee  
25 of freedom of speech and expression protects the right for any



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1 Mr. Chavez's testimony.

2 THE COURT: Very good. Please call your next witness.

3 MR. WARSHAVSKY: Your Honor, Hermès will call  
4 Dr. Kevin Mentzer, who is waiting outside.

5 KEVIN MENTZER,

6 called as a witness by the Plaintiff,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FERGUSON:

10 Q. Good afternoon, Dr. Mentzer.

11 A. Good afternoon.

12 Q. What are the topics you are here to talk to us about today?

13 A. In general, I am here to talk about blockchain NFTs and the  
14 relationship of the MetaBirkins NFT in relation to blockchain.

15 Q. And who retained you to provide this testimony?

16 A. Baker Hostetler, attorneys for Hermès.

17 Q. Prior to being retained in this litigation, have you ever  
18 worked or performed any work for Baker Hostetler before?

19 A. No, I had not.

20 Q. Prior to being retained in this litigation, have you ever  
21 performed any work for Hermès before?

22 A. No.

23 Q. Prior to being retained in this litigation, have you ever  
24 testified as an expert before?

25 A. No, I have not.

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1 what we call immunability. I can't change a prior block or any  
2 transactions after they've been certified.

3 Q. Could you explain to us what is depicted in this slide?

4 A. So it's to show that we -- that a block is no more than a  
5 series of transactions, and then we chain each block to the  
6 next block.

7 Q. What's depicted in this next slide?

8 A. So a blockchain is decentralized. So there is no central  
9 authority, there is no company behind blockchain, there is no  
10 government behind blockchain.

11 So this image I put together to represent that it is  
12 truly distributed and really anyone can participate. And as a  
13 result of that, you have the entire blockchain available to  
14 you, should you want to see it.

15 Q. Are there different types of blockchain?

16 A. Yes, there are.

17 Q. Can you describe those for us?

18 A. The two biggies are -- the two biggest blockchains are also  
19 public blockchains. Bitcoin I think we're all familiar with,  
20 and then Ethereum would be another large one.

21 Q. Can you explain to us the differences --

22 Let me rephrase that. Are there differences between  
23 bitcoin and Ethereum?

24 A. Yes.

25 Q. Can you explain those to us?

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1 A. So this is an analogy that I frequently use with my  
2 students to be able to explain them. It's the traditional  
3 phone, very good at making calls. That's what we do with  
4 bitcoin. It's very good at doing bitcoin-related transactions  
5 where you're exchanging the cryptocurrency bitcoin.

6 On the Ethereum blockchain, I refer to that more as  
7 the smartphone. It can still make the calls. We can still  
8 transfer ether, which is the cryptocurrency, ether or eth, on  
9 the Ethereum blockchain, but the design of Ethereum was done in  
10 such a way that it let's me invent code on the blockchain as  
11 well. So it allows me to do things like create NFT contracts,  
12 smart contracts, on the blockchain.

13 Q. What is an NFT?

14 A. I mean, most of us think of an NFT is that picture that,  
15 you know, that is associated with it from a technology point of  
16 view. An NFT, which is short for non-fungible token, is just a  
17 token that -- so you can think of a subway token, right. I  
18 have a subway token. I give one to you this week, you give me  
19 one back next week. I don't care if you give me the same one  
20 back because they have the same value. That would be a  
21 fungible token. It's not unique.

22 A non-fungible token means it's unique. I'm going to  
23 give you one. I care about it because it has unique attributes  
24 that makes it valuable, potentially valuable, or different than  
25 the other tokens on there. So a non-fungible token is a way to

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1 say a unique token on the chain.

2 Q. May NFTs be linked to digital files?

3 A. Yes, they are.

4 Q. And are there different types of digital files that NFTs  
5 may be linked to?

6 A. Oh, certainly.

7 Q. Can you elaborate that for us?

8 A. That is kind of what this slide represents. It may be  
9 linked to an image, like the Bored Ape Yacht Club NFT we're  
10 seeing there first. But it could as well be linked to a music  
11 file, a movie file, or no file at all, which is why I have a  
12 blank circle there.

13 Q. So can you elaborate for us the relationship between the  
14 NFT and the digital file?

15 A. So, in general, NFTs do not store the image on the  
16 blockchain. Instead, we point to a repository that is usually  
17 also on a decentralized network that points to that digital  
18 file that we tend to think of as the NFT.

19 Q. What is the role of the smart -- can you explain to us what  
20 a smart contracts is?

21 A. Smart contract is the code, usually written in the program  
22 language solidity on the Ethereum blockchain which manages an  
23 NFT collection. So if I want to transfer the NFT or sell the  
24 NFT, I have to go through that smart contract, which does  
25 things like validate I'm the true owner of that NFT and I can

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1 validly transfer them.

2 Q. And the smart contract, is that an entry on a blockchain?

3 A. Yes, it is.

4 Q. Is there a reason why the digital file is usually not on  
5 the blockchain?

6 A. Yes.

7 Q. Why is that?

8 A. With blockchain technology, we pay fees based off of the  
9 size of the transaction. So most people when they are  
10 designing their NFTs don't put the actual digital image on  
11 chain or on the blockchain because it would cause much higher  
12 fees to be able to do transactions with them.

13 Q. Can you explain to us how a transaction on the blockchain  
14 works?

15 A. So, in general, all transactions are initiated by a digital  
16 warrant. That is what this slide is showing here. We have a  
17 digital wallet on both ends, the digital wallet, we don't know  
18 anyone on the blockchain because we just know digital wallets.  
19 So the digital wallet itself initiates a transaction that could  
20 potentially transfer cryptocurrency, could transfer the NFT to  
21 another digital wallet.

22 Q. Where are NFTs bought and sold?

23 A. You can kind of buy NFTs really on any site that's been  
24 designed to be able to do that type of transactions, but most  
25 folks use an NFT marketplace to be able to do those

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1 MR. FERGUSON: I offer Exhibit 55 into evidence.

2 MR. MILLSAPS: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. What is shown in this next slide?

5 A. This is a chart that I put together that showed all of the  
6 resales of the MetaBirkins along with the dollar value amount  
7 at the time that transaction occurred.

8 Q. And is this chart derived from the compilation that you  
9 created that was Exhibit C to your report?

10 A. That's correct.

11 Q. What does the horizontal axis represent?

12 A. They are the unique date timestamps for each resale.

13 Q. And what does the vertical axis represent?

14 A. The value in U.S. dollars of those resales.

15 Q. Now, resales were in ETH, is that correct?

16 A. That's correct.

17 Q. So how did you calculate the U.S. dollar amount for these  
18 resales?

19 A. I didn't calculate it. I took it directly off of the  
20 Etherscan.io site that does the conversion for me.

21 Q. And what was the information of the Etherscan.io record?

22 A. That would tell me both the ETH value and then the value in  
23 U.S. dollars at that date and time.

24 Q. And so each of these blue circles in this chart, what does  
25 each blue circle represent?

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1 A. One of the retails.

2 Q. And then looking at the green line that I've just added to  
3 that chart, what does that green line represent?

4 A. That represents the timeline while the minting was going  
5 on, so I could see when the minting started and ended. So I  
6 could compare whether resales were occurring at the same time  
7 the minting process was occurring.

8 Q. When the MetaBirkins NFTs were created, were they linked to  
9 any digital file?

10 A. Not initially, no.

11 Q. At the time that the minting transactions began, were they  
12 linked to a digital file?

13 A. Yes, they were.

14 Q. And what was the digital file they were linked to?

15 A. They were linked to a covered bag image that had some  
16 animation that said future home of MetaBirkins.

17 Q. And how did you determine that?

18 A. One of the methods in the smart contract allows the  
19 contract owner to set the repository, the point to the  
20 repository for those images. So I found the transaction  
21 related to that setting and navigated to that repository to  
22 look at what the images were at that time.

23 Q. And can you show me, can you describe to me what is shown  
24 in this slide?

25 A. The top line is the actual transaction that set the pointer

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1 to where the image files could be found and navigating to that,  
2 you are arrive -- I could find this animated GIF file that  
3 represented what they would have looked like at the beginning  
4 of the minting process.

5 Q. And so when the first three minting transactions took  
6 place, individuals were buying MetaBirkins NFTs, is that  
7 correct?

8 A. So this was the image linked to the original, the first  
9 three minted MetaBirkins, yes.

10 Q. What image were those first three minters purchasing?

11 A. It would have been linked to this image right here.

12 (Counsel confer)

13 Q. And can you look at Exhibit 81.

14 Can you tell us what Exhibit 81 is?

15 A. It's just marked GIF file. I'm assuming that is the  
16 animated GIF we're seeing for future home of a MetaBirkins.

17 MR. FERGUSON: I offer Exhibit 81 into evidence.

18 MR. MILLSAPS: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 81 received in evidence)

21 Q. Did there come a time when the image linked to MetaBirkins  
22 changed?

23 A. Yes.

24 Q. Can you describe for us what is shown in this slide?

25 A. After the first three MetaBirkins were minted, I saw a



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1 series of transactions that were setting the base URI so this  
2 would, prior to the fourth being minted, so this would have  
3 been the last one which set a new repository navigating to that  
4 new repository. This is the image that was there at the time,  
5 this JPEG image.

6 Q. And is this image on the blockchain?

7 A. No, it's not.

8 Q. Who decides what image the NFT is going to point to?

9 A. That's controlled by the smart contract owner.

10 Q. So the individual purchasing the NFT doesn't have control  
11 over how that pointer is going to function, is that correct?

12 A. That's correct.

13 Q. And could you look at Exhibit 83 in your folder.

14 Can you identify that?

15 A. That is the covered bag image that was set after the third  
16 NFT was minted.

17 MR. FERGUSON: I offer Exhibit 83 into evidence.

18 MR. MILLSAPS: No objection.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 83 received in evidence)

21 Counsel, find a spot in the next five minutes to break  
22 for the day.

23 MR. FERGUSON: Five minutes to break?

24 THE COURT: Find a time in the next five minutes to  
25 break for today.

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1 MR. FERGUSON: OK. Thank you.

2 BY MR. FERGUSON:

3 Q. And did there come a time when the image changed, the image  
4 linked to the NFT MetaBirkins changed again?

5 A. Yes.

6 Q. And can you tell us what is shown in this slide?

7 A. That top transaction was another pointer to a new  
8 repository for the MetaBirkins NFT that happened shortly after  
9 the minting process was completed. And at that time, the  
10 unveiling of the individual MetaBirkins happened.

11 Q. And can you look at Exhibit 84.

12 And can you identify that for us?

13 A. Yes. That would be one of the images linked to one of the  
14 specific MetaBirkins NFTs.

15 MR. FERGUSON: I offer Exhibit 84 into evidence.

16 MR. MILLSAPS: No objection.

17 THE COURT: Received.

18 (Plaintiff's Exhibit 84 received in evidence)

19 Q. Can you describe for us what is shown in this slide?

20 A. It's a combination of the earlier slide that showed the  
21 minting history with date timestamp and what the image would  
22 have looked like at any given point in time along that history.

23 Q. Using the slide as a reference, how many MetaBirkins were  
24 sold using the future home of a MetaBirkins?

25 A. There were three that were sold under that original image.

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1 Q. And how many were sold under the covered veiled image?

2 A. The remaining 97.

3 Q. Were any minting rights sold under the bag image?

4 A. No.

5 Q. Can you describe to us what is shown in this chart?

6 A. This is the same chart we saw earlier that was the resales  
7 with the addition of when the actual digital files changed. So  
8 the red indicated digital file there would have been the  
9 animated GIF image of the covered bag, the yellow would be the  
10 covered bag itself, and then the blue would be the unveiling  
11 event and when the individual MetaBirkins was revealed.

12 Q. So looking at this chart, the resales that took place to  
13 the left of the blue line, what was the image linked to the  
14 MetaBirkins when those resales took place?

15 A. They were buying a covered bag image.

16 Q. And is it possible today that the digital filed linked to  
17 the MetaBirkins could change again?

18 A. It could, yes.

19 Q. Who has the ability to do that?

20 A. The MetaBirkins contract owner.

21 Q. Anybody else?

22 A. No.

23 MR. FERGUSON: Your Honor, I'm kind of at a logical  
24 breaking point.

25 THE COURT: OK. Ladies and gentlemen, we are off to a

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Mentzer - Direct

1 good start, but it's very important that we start promptly at  
2 9:30 to stay on schedule. So be sure to be back in the jury  
3 room like about 20 after nine so we can start right at 9:30.

4 Have a very good evening, and we'll see you tomorrow.

5 (Continued on next page)